

REMARKS

Claims 1-2 and 8-17 and 21 are currently pending in the application. Only claims 1 and 15 are in independent form.

Applicants express their gratitude for courtesies extended by the Examiner during a personal interview with Applicants' representative Amy E. Rinaldo conducted April 19, 2004.

Claims 1, 2, 5, 14 and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Ash patent. It is respectfully submitted that the limitations of claim 7, a non-rejected claims have been incorporated into the independent claims thereby rendering the present rejection moot. Reconsideration of the rejection is respectfully requested.

Claims 1, 2 and 5-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Martucci patent in view of the Barnett patent. Reconsideration of the rejection under 35 U.S.C. §103(a), as being unpatentable over the Martucci patent, as applied to the claims is respectfully requested.

It is Hornbook Law that before two or more references may be combined to negative patentability of a claimed invention, at least one of the references must teach or suggest the benefits to be obtained by the combination. This statement of law was first set forth in the landmark case of Ex parte McCullom, 204 O.G. 1346; 1914 C.D. 70. This decision was rendered by Assistant Commissioner Newton upon appeal from the Examiner-in-Chief and dealt with the matter of combination of references. Since then many courts have over the years affirmed this doctrine.

The applicable law was more recently restated by the Court of Appeals for the Federal Circuit in the case of ACS Hospital Systems, Inc. v. Montefiore

Hospital, 732 F.2d 1572,1577, 221 USPQ 929 (Fed. Cir. 1984). In this case the Court stated, on page 933, as follows:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103 teachings of references can be combined only if there is some suggestion or incentive to do so. The prior art of record fails to provide any such suggestion or incentive. Accordingly we hold that the court below erred as a matter of law in concluding that the claimed invention would have been obvious to one of ordinary skill in the art under section 103."

This Doctrine was even more recently reaffirmed by the CAFC in Ashland Oil, Inc. v. Delta Resins and Refractories, Inc., et al., 776 F.2d 281,297, 227 USPQ 657,667. As stated, the District Court concluded:

"Obviousness, however, cannot be established by combining the teachings of the prior art to produce the claimed invention unless there was some teaching, suggestion, or incentive in this prior art which would have made such a combination appropriate."

The Court cited ACS Hospital Systems, Inc. in support of its ruling. This Doctrine was reaffirmed in In re Deuel, 34 USPQ 2d 1210 (Fed. Cir. 1995).

The Office Action states that the Martucci patent discloses the recited hose for use in an automobile comprising forming the first layer of a fluorocarbon. The Office Action concludes that the Martucci patent discloses all of the recited structure with the exception of providing a plurality of compartments in the first layer. It is respectfully submitted that the use of a fluorocarbon as the inner liner of a hose assembly for a fuel system is known to those of skill in the art. However, the compartmentalization of such a hose assembly is not known to those of skill in the art, and in fact, is counter-intuitive. A primary problem with hose assemblies in the fuel system is that multiple fluids need to be transported to the same place. Presently pending independent claims overcomes this problem by enabling the

polymeric fluorocarbon hose assembly to include compartments therein. This is a substantial benefit over the prior art systems, which only enabled one type of fluid to flow therethrough. There is no disclosure in the prior art of the Martucci patent for the need for or how to accomplish such compartmentalization in a fuel hose assembly.

The Office Action states that the Barnett patent teaches various numbers of passageways can be provided in a first layer of a tube and it would be obvious to one of skill in the art to modify the first layer of the Martucci patent by providing multiple compartments as suggested by Barnett. However, in order for such an anticipation rejection to be appropriate, there must be some suggestion in either the Martucci or Barnett patents for the combination of these two features. There is absolutely no suggestion in either patent for such a combination. Further, one of skill in a fuel hose art would not look to plastic hoses to overcome any problems associated with fuel hose assemblies. This is because fuel hoses have specific requirements with regard to permeation and such requirements are not satisfied by the plastic hose assembly disclosed in the Barnett patent. There would therefore be no inclination to a person of skill in the fuel hose art to look to the plastic hose art to overcome any problems.

Additionally, there is no teaching or suggestion in either reference for the combination of references. It is respectfully submitted that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention when there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for implicit showing is that the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to one of ordinary skill in the art." In re Kotzab, 217 F.3d 1365 (Fed. Cir. 2000). The mere fact that references can be combined or modified does not render the result and combination obvious unless the prior art suggests the desirability of the combination.

In re Mills, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990). “When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there was a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See e.g. McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-1352, 60 USPQ 2d 1001, 1008 (Fed. Cir. 2001) “The central question is whether there is a reason to combine the references,’ a question of fact drawing on the Graham factors.” Okajima v. Bourdeau, 261 F.3d 1350, 59 USPQ 2d 1795 (Fed. Cir. 2001). In the present rejection, not only is it unobvious to combine the references, it is not suggested by the prior art. Specifically, one of skill in the art would never look to non-fuel hose art for overcoming the problems disclosed in the present application. The non-fuel hose art does not consider issues such as fuel permeation, kink resistance to avoid static buildup, etc. Additionally, there is a significant time span between the filing dates of the two patents. If it was obvious to have combined the two references there would be some suggestion in one of the patents for such a combination. The lack of such a suggestion indicates that there was no consideration or suggestion for such a combination. Thus, the combination of references is improper.

Since neither the Martucci nor the Barnett patent alone, or in combination, suggest the combination of references nor disclose the hose assembly of the presently pending independent claims, the claims are patentable over the cited prior art and reconsideration of the rejection is respectfully requested.

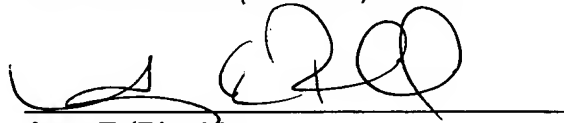
The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC



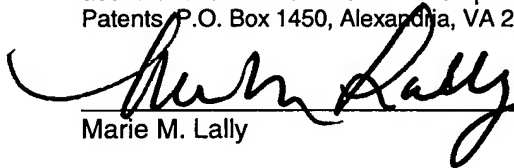
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